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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FCC 94-110

DISPATCHED BY

In the Matter of)
)
Revision of Part 2 of the)
Commission's rules relating to the) ET Docket No. 94-45 ✓
marketing and authorization of) RM-8125
radio frequency devices.)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 9, 1994 ; Released: June 9, 1994

By the Commission:

Comment Date: (75 days from publication in the Federal Register)
Reply Comment Date: (105 days from publication in the Federal Register)

INTRODUCTION

1. By this action, the Commission proposes to amend the marketing regulations and the equipment authorization procedures that apply to radio frequency (RF) devices.¹ The proposed changes are intended to remove certain inconsistencies in the existing rules and to consolidate in the rules several interpretations issued in letters. These inconsistencies have lead to confusion for industry and may have discouraged or prevented use of some otherwise legitimate methods of marketing RF devices pending receipt of an authorization from the Commission. These proposals would stimulate economic growth by permitting products to be developed on a cooperative basis by manufacturers and retailers, and by potentially decreasing the time for a product to reach the marketplace. This action is partially in response to a petition for rule making filed by the Consumer Electronics Group of the Electronic Industries Association (EIA/CEG).²

BACKGROUND

¹ See 47 CFR Part 2, Subpart I. RF devices are products that in their operation are capable of emitting radio frequency energy. See 47 CFR Section 2.801. Examples of RF devices include radio receivers, computers, video cassette recorders, and radio transmitters.

² See Petition for Rulemaking filed by EIA/CEG on October 16, 1992, RM-8125. The Commission is also making proposals addressing several additional changes to remove inconsistencies and clarify existing equipment authorization regulations, to remove outdated and unnecessarily restrictive regulations, and to correct erroneous rule citations.

2. Subpart I of Part 2 of the Commission's rules contains the regulations governing the marketing of RF devices. These rules describe the conditions that must be met before an RF device may be marketed in the United States. Subpart J of Part 2 of the rules specifies the equipment authorization procedures that apply to RF devices.³ These rules describe the procedures that must be followed to obtain equipment authorization, the procedures used by the Commission to administer the equipment authorization program, and the responsibilities of equipment manufacturers and importers.

MARKETING REGULATIONS

3. Existing rules. In general, the marketing regulations prohibit the marketing of RF devices prior to a demonstration of compliance with the applicable technical standards and compliance with the Commission's equipment authorization requirements.⁴ Exceptions to the marketing regulations rules are provided in Section 2.806, which permits certain digital devices to be: 1) announced and offered for sale prior to authorization; 2) operated for compliance testing; 3) operated for performance evaluation at the manufacturer's or user's site; 4) demonstrated at a trade show; and 5) tested for compliance at the end user's site after installation.⁵ In addition, Section 2.809 provides similar exceptions to the marketing rules for industrial, scientific, and medical (ISM) devices subject to the provisions in

³ See 47 CFR Part 2, Subpart J. The equipment authorization procedures are: type approval, type acceptance, certification, notification and verification. Type approval, though still referenced in the rules, is no longer used. Under type acceptance, certification, and notification, the equipment must be tested to show compliance with the technical standards and other operating requirements contained in the rule parts under which it will operate. An application for authorization must be submitted to, and evaluated by, the Commission before it will issue a grant of type acceptance, notification, or certification. Products subject to the verification procedure must be tested to demonstrate compliance with the standards; however, this information is not required to be submitted to the Commission unless specifically requested.

⁴ Marketing includes sale or lease, offers for sale or lease (including advertising for sale or lease), and importation, shipment or distribution for the purpose of sale or lease or offering for sale or lease. See 47 CFR Sections 2.803 and 2.805.

⁵ Various conditions attach to these exceptions to the marketing rules, e.g., operation at the user's site prior to authorization is limited to Class A (commercial, industrial, or business) digital devices that are in the development, design or preproduction stages and where, because of size or unique capability, customer acceptability cannot be determined at the manufacturer's facilities. See 47 CFR Sections 2.806 and 15.3(h).

Part 18 of the rules.⁶ Further, Section 2.803 permits the advertising and display, but not activation, of products that require type acceptance, certification or notification prior to obtaining a grant of authorization as long as the advertising or display is accompanied by a notice that the equipment has not been authorized and may not be marketed until Commission authorization is obtained.⁷ However, Section 2.805, which addresses the marketing of devices that are not required to be authorized by the Commission, e.g., devices subject to authorization under the verification procedure, does not contain any provisions that permit advertising or display before a product has been demonstrated to comply with the applicable standards.⁸

4. EIA/CEG Petition. In its petition, EIA/CEG requests that the Commission consolidate and harmonize Sections 2.803, 2.805 and 2.806 of the rules. Specifically, EIA/CEG requests that we permit all RF devices to be announced, advertised, displayed, activated at trade shows, and offered for sale prior to authorization or determination of compliance with the technical standards, provided final delivery to the buyer or centers of distribution does not occur prior to compliance with the equipment authorization procedures. EIA/CEG also proposes that the advertising, display, or announcement and offer for sale of an RF device prior to authorization or a determination of compliance be accompanied by a conspicuous notice that the product has not been approved and must comply with the Commission's rules prior to final delivery. EIA/CEG further requests that the rules be amended to permit, during the development, design or preproduction stages, the operation of any RF device at a customer's site to evaluate product performance and determine customer acceptability where this cannot be determined at the manufacturer's facilities because of size or unique capability of the device.

5. EIA/CEG suggests that the inconsistent provisions of the existing rules have lead to confusion for industry, with the result that vendors of consumer electronics equipment are denied significant opportunities to promote their products to potential customers. EIA/CEG states that the changes it proposes would create an important avenue for the promotion and introduction of new products without increasing the potential for harmful interference to radio users.

⁶ See 47 CFR Section 2.809. Additional exceptions are provided in 47 CFR Sections 2.811 and 2.813 for broadcast transmitters operating under Part 73 of the rules and instructional television fixed transmitters operating under Subpart I of Part 74 of the rules.

⁷ See 47 CFR Section 2.803.

⁸ See 47 CFR Section 2.805. The Commission has, however, by interpretation permitted manufacturers of products subject to the marketing rules in Section 2.805 to display and advertise those products following the procedures in 47 CFR Section 2.803. See letter of January 8, 1992, from Richard B. Engelman, Chief, Technical Standards Branch, Office of Engineering and Technology, FCC, to John M. Bianchi, Senior Engineer, Compliance Engineering, Toshiba America Consumer Products, Inc..

6. Comments. Comments responding to this petition were filed by the National Association of Broadcasters (NAB), and reply comments were filed by EIA/CEG. NAB agrees with EIA/CEG that the present marketing rules are confusing and in need of amendment. However, NAB expresses concern that the changes proposed by EIA/CEG are too general and could lead to RF interference problems. NAB suggests modifications to the notice proposed by EIA/CEG warning that the product must comply prior to final delivery and requests that this notice also be required for product demonstrations, products operated for the purpose of compliance testing, and products operated at a user's site for evaluation of product performance and determination of customer acceptability. NAB further requests that, prior to demonstration of RF devices at trade shows or at potential customer's sites, manufacturers be required to perform preliminary interference testing and that a certification of such testing accompany the demonstration device.

7. EIA/CEG, in reply comments, suggests that NAB's request to require preliminary interference testing, with a certification of that testing to accompany the demonstration, is not necessary or appropriate. Alternatively, EIA/CEG proposes that the manufacturer certify that the product is "designed with the intent of compliance with all applicable FCC requirements." EIA/CEG also states that it sees no need to require labelling of a product during compliance testing, developmental operations at the manufacturer's own facilities, or similar activities. It adds that the intent of the labelling requirement is to advise the public that the product is not yet approved and that no sales transaction can be consummated until such approval is obtained.

8. Discussion. We agree with EIA/CEG and NAB that changes to the existing marketing rules should be made to remove inconsistencies and unnecessary restrictions. In particular, we agree that: 1) the marketing provisions in Section 2.803, permitting advertising and display prior to authorization, should apply to all RF devices including those requiring verification; and, 2) any RF device should be permitted to be operated for compliance testing, demonstration at a trade show, or product evaluation at the manufacturer's facilities.⁹ However, we are concerned about some of the other changes sought by EIA/CEG because of their potential to allow non-compliant devices to be sold or provided to the general public, thereby possibly resulting in significant interference and enforcement problems. Accordingly, we are proposing changes that address our concerns and still provide significant harmonization and relaxation of the existing marketing rules in order to facilitate product marketing by equipment manufacturers.¹⁰ Our proposed changes to the regulations are set forth in the attached Appendix B and are discussed in the following

⁹ Station licenses or operating authorities would still have to be obtained for devices that operate under rule sections that require such station licensing.

¹⁰ Because the marketing exceptions for radio frequency devices operated under Part 18 of our rules are similar to those for digital devices, we have combined these two sections in our proposal.

paragraphs.

9. In adopting the marketing rules in 1970, the Commission emphasized that its actions were designed to stop mass-marketed devices from reaching the public before a grant of equipment authorization had been obtained.¹¹ The Commission rejected a request to permit RF devices to be sold, but not delivered, to the general public before a determination of compliance and authorization of the equipment. In 1991, the Commission reaffirmed its decision to prohibit the delivery of products to consumers before the products are fully compliant with the regulations.¹² EIA/CEG's petition would permit equipment to be offered for sale or lease, but not delivered, to any customer (including consumers) prior to equipment authorization, provided the buyer is advised in writing that the device has not yet been approved by the Commission. As the Commission decided previously, we do not believe it would be realistic to permit consumer devices to be offered for sale to potentially millions of people and expect delivery of the devices to await a Commission authorization.¹³ Enforcement of such a program would be unmanageable. We note that Section 2.806(a) of our rules already permits the offer for sale, prior to equipment authorization, of digital devices that are subject to verification provided: 1) the devices are in the conceptual, developmental, design or preproduction stage; 2) the prospective buyer is advised in writing at the time of announcement or offer for sale that the devices are subject to the Commission's rules and that the equipment will comply with the appropriate rules prior to delivery to the buyer or centers of distribution; and, 3) the devices are not delivered prior to verification.¹⁴ Section 2.809(a) permits

¹¹ See Report and Order, Docket No. 18426, 35 FR 7898, May 22, 1970, at para. 12. Since the implementation of these rules, the provisions of Sections 2.803, 2.806 and 2.809 permitting the advertising of non-authorized devices have been added. See Memorandum, Opinion and Order, RM-2573 and RM-2601, 58 FCC 2d 784; Order Granting in Part Reconsideration, Docket No. 20780, 45 FR 24154, April 9, 1980; Report and Order, Gen. Docket No. 81-463, 47 FR 13812, April 1, 1982; and, Third Report and Order, GEN Docket No. 20718, 50 FR 36067, September 5, 1985.

¹² See Memorandum, Opinion and Order, GEN Docket No. 87-389, 6 FCC Rcd 1683 (1991) at para. 19. In this action, the Commission indicated that conditional sales contracts between manufacturers and wholesalers or retailers and agreements to produce new products, manufactured in accordance with designated specifications, are permissible where delivery of devices is contingent upon a grant of equipment authorization. Such normal business activities do not involve the general public. We are incorporating the text of this ruling within our proposal.

¹³ See Memorandum, Opinion and Order, GEN Docket No. 87-389, supra., at para. 19.

¹⁴ See 47 CFR Section 2.806(a). Digital devices subject to authorization under the verification procedure include all Class A and some Class B digital devices. Class A digital devices are digital

the offer for sale of Part 18 industrial, scientific and medical equipment under the same conditions.¹⁵ While the above exceptions do not specifically exclude sales to consumers, the practical constraints make such sales infeasible. We now believe it is appropriate, and thus are proposing, to permit all types of RF devices to be offered for sale prior to equipment authorization to parties other than consumers, i.e., business, commercial, industrial, scientific, and medical users, subject to the above conditions. This proposal would also make it clear that no RF devices may be offered for sale to the general public prior to compliance with the standards, including the equipment authorization requirements.

10. EIA/CEG also requests that the Commission permit RF devices to be operated at customers' sites prior to authorization to evaluate product performance and determine customer acceptability. Sections 2.806(c)(4) and 2.809(c)(3) permit such operation, but only for Class A digital devices and Part 18 ISM equipment. As expressed previously, we have been reluctant to expand this exemption too broadly because of the possibility that a large quantity of untested and potentially noncompliant equipment could end up in the hands of the general public. Should that happen, it would be very difficult to trace the ultimate owner of the equipment so that it could be recalled or modified. Accordingly, we are proposing to expand the exceptions in Sections 2.806(c)(4) and 2.809(c)(3) to allow the operation of all types of RF devices prior to equipment authorization, but only at the sites of business, commercial, industrial, scientific, and medical users.¹⁶

11. EIA/CEG also requests that parties responsible for verification of RF devices be given the option of performing compliance testing at the customer's location after sale and installation. Sections 2.803(b) and 2.809(b) allow such testing of Class A digital devices and nonconsumer Part 18 ISM equipment. Again we do not believe it appropriate to allow the installation of untested equipment at consumer locations. However, we believe such an approach is workable for devices marketed on a more limited basis. We therefore are proposing to expand these exceptions only for business,

devices, such as computers, that are marketed for use solely in a commercial, industrial, or business environment and do not include devices which are marketed for use by the general public or for use in other environments, including the home. Class B digital devices are digital devices that may be used by the general public in any environment, including the home. Class B personal computers and personal computer peripherals are subject to certification. All other Class B digital devices, such as typewriters and hand-held video games, are subject to verification. See 47 CFR Sections 15.3(h), 15.3(i), and 15.101.

¹⁵ See 47 CFR Section 2.809(a).

¹⁶ We are also proposing that any devices be designed with the intent of complying with all applicable regulations, as suggested by EIA/CEG.

commercial, industrial, scientific, and medical user sites.¹⁷

12. These proposed changes should harmonize the marketing rules for all RF devices regardless of the rule part under which they operate. However, EIA/CEG indicates that it would not object if the Commission excluded devices subject to authorization under type acceptance from the scope of the proposed rule changes. Such an exclusion would, if adopted, effectively limit the requested harmonization to RF devices operating under Parts 5, 15, and 18, as well as to some transmitters operating under Parts 21, 73, 74, 78, 80, and 94.¹⁸ While we are not proposing to limit the exceptions in this manner, we invite comment on whether such limitation may be appropriate.

EQUIPMENT AUTHORIZATION RULES

13. We are also proposing a number of other changes to the equipment authorization rules in Subpart J of Part 2. Similar to the proposed marketing rule changes, these proposed changes are intended to resolve inconsistencies and remove unnecessary restrictions in the equipment authorization rules. These proposals, which are set forth in Appendix B, address the regulations regarding the modification of authorized devices, the definition of an electrically-identical product, the retention of records for verified devices in the responsible party's files, and the provisions addressing the submission to the Commission of data or samples for verified devices.¹⁹

¹⁷ We note, however, that Sections 15.31(d) and 15.201(c) allow compliance testing of Part 15 devices at consumer locations when measurements can be performed only at the installation site. See 47 CFR Sections 15.31(d) and 15.201(c).

¹⁸ Type acceptance applies to transmitters operated under Parts 21, 22, 74, 78, 80, 87, 90, 94, and 95, to AM stereo exciter-generators and emergency broadcast system encoders operated under Part 73, and to external radio frequency power amplifiers operated under Part 97. In some cases, however, transmitters used for specific applications under these rule parts are subject to notification instead of type acceptance, e.g., fixed transmitters operating under Part 94.

¹⁹ For clarity, we are also proposing to modify the rules to indicate explicitly that, as with any request for authorization, an anti-drug abuse statement is required with requests for permissive changes. This is, of course, already the case under the Commission's existing general anti-drug abuse rules (see 47 CFR Section 1.2002), but we believe it will be helpful to also include the requirement in our Part 2 rules. (See the changes proposed to 47 CFR Section 2.932.) We are also proposing, for clarity, to amend the rules to indicate that proper labelling of a product is a condition of the grant of equipment authorization and is required prior to marketing. (See the changes proposed to 47 CFR Sections 2.803, 2.925, and 2.927.) In addition, we are proposing to remove outdated regulations, e.g., references to type approval which is no longer employed. (See the

14. Modification of authorized devices. The Commission observes that it has become a fairly common practice for RF devices, especially those intended for sale to the general public, to be modified by someone other than the grantee of the equipment authorization. In this regard the regulations contain specific provisions to permit someone other than the grantee to modify type accepted devices provided new measurement data is filed with the Commission.²⁰ However, for type accepted, certified or notified products, the existing rules state that the party responsible for ensuring that a product complies with the standards is the grantee.²¹ For verified products, the rules state that the party responsible for ensuring compliance is the manufacturer or, in the case of imported equipment, the importer.²² The rules do not address who is responsible for compliance of the equipment when it is modified by someone other than the grantee or, for verified devices, the manufacturer or importer.²³

15. It is not realistic to require the party that obtained the original authorization to accept responsibility for ensuring that it complies with the standards when that product is modified by an independent party. Similarly, the Commission cannot reasonably require the holder of the grant of equipment authorization or, in the case of verified equipment, the manufacturer or importer to retain measurement data and other records demonstrating that the product, as

changes proposed to 47 CFR Sections 2.901, 2.903, 2.915, 2.917, 2.925, 2.931, and 2.961-2.969.) We are also proposing to combine duplicative rules into single rules sections. (See the changes proposed to 47 CFR Section 2.927(b) and (d) and to 47 CFR Sections 2.956 and 2.957.) Similarly, we are proposing to delete 47 CFR Sections 2.979, 2.1003 & 2.1033 which duplicate other rules in Part 2. Finally, we are proposing to correct erroneous rule citations, e.g., printing errors and citations resulting from earlier, unrelated rule making proceedings that changed rule section numbers without making corresponding amendments in Part 2. (See the changes proposed to 47 CFR Sections 2.815, 2.913, 2.925, 2.926, 2.933, 2.934, 2.941, 2.975, 2.983, 2.1005, 2.1033, and 2.1300.)

²⁰ See 47 CFR Section 2.1001(b)(3). While the regulations also permit anyone to modify notified devices, there is no requirement to file new measurement data with the Commission. See 47 CFR Section 2.977.

²¹ See 47 CFR Section 2.909(a).

²² See 47 CFR Section 2.909(b).

²³ For products subject to certification, modifications by anyone other than the grantee, or its designated agent, are specifically prohibited unless the party performing the modifications obtains a new grant of certification. See 47 CFR Section 2.1043(b)(3).

modified by a separate party, continues to comply with the standards.²⁴ We are proposing to resolve this inconsistency in the regulations, and the improper burden placed by these rules on the currently-designated responsible party, by amending the rules to state that any party that subsequently modifies an authorized device becomes the party responsible (the "Responsible Party") for ensuring compliance of the modified device with the standards and for retaining measurement data demonstrating compliance.²⁵ In order to facilitate identification, we are also proposing that the modified product be labelled indicating that it was modified and specifying the name, address and telephone number of the new Responsible Party. Comments are requested as to any additional requirements that should be considered for modified devices.

16. Electrically identical products. The rules permit a grantee to change the "model/type number" and trade names of electrically identical products without notification to the Commission.²⁶ However, these rules do not define what is meant by "electrically identical." Accordingly, we are proposing to amend the rules to clarify that a product is considered to be "electrically identical" if no changes are made to the product authorized by the Commission, or if the changes made to the product could be treated under the provisions of type acceptance or certification as "Class I" permissive changes.²⁷

17. Retention of records for verified devices. On February 29, 1988, the Commission released a Public Notice detailing the information that is required to be retained by the responsible party in the data file for verified devices.²⁸ That information includes the name of the company that performed the measurements, identification of the equipment under test, photographs of the test set-up, and other data to facilitate assurance that the product was properly tested to demonstrate compliance with the standards. However, the requirements contained in that Public Notice were never incorporated into the regulations. We are now proposing to so incorporate the list of

²⁴ The designated responsible party is required to retain the records demonstrating compliance. See 47 CFR Sections 2.936, 2.938, 2.953, 2.955, and 2.975(g).

²⁵ See the proposed revisions in Appendix B to 47 CFR Sections 2.909, 2.936, 2.938, 2.946, 2.953, 2.955, 2.956, and 2.975. Of course, if the product has not been modified by an independent party the rules would continue to designate the grantee or, for verified devices, the manufacturer or importer as the Responsible Party.

²⁶ See 47 CFR Section 2.924. The rules also require that a new application for equipment authorization be filed whenever there is a change in identification that exceeds the provisions in Section 2.924. See 47 CFR Section 2.933.

²⁷ See the proposed changes to 47 CFR Sections 2.924 and 2.933.

²⁸ See Public Notice, 53 Fed. Reg. 5988, February 29, 1988. See, also, 47 CFR Section 2.955.

information set forth in the Public Notice.²⁹

18. Requests for data or test samples. Any party holding a grant of equipment authorization from the Commission, i.e., type acceptance, certification or notification, is required, within 60 days, to submit test samples or data upon request by the Commission.³⁰ While the existing rules provide the Commission with the authority to request samples or test data for devices authorized under verification, the regulations do not specify any time limits for providing this data.³¹ To remove this disparity, we are proposing to require samples or data for verified devices to be submitted to the Commission within the same time limits currently applied to products covered under the other forms of equipment authorization.³² We are also proposing to amend the rules to indicate that the Responsible Party is required to supply the test sample or data.

ADMINISTRATIVE PROVISIONS

19. This is a non-restricted notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR Sections 1.1202, 1.1203, and 1.1206(a).

20. Initial Regulatory Flexibility Analysis. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. The IFRA is set forth in Appendix A. Written public comments are requested on the IFRA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq (1981).

21. Comment dates. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before (75 days from publication in the Federal Register) and reply

²⁹ See the proposed change in Appendix B to 47 CFR Section 2.955.

³⁰ See 47 CFR Section 2.946.

³¹ See 47 CFR Sections 2.956 and 2.957.

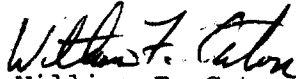
³² See the proposed change in Appendix B to 47 CFR Section 2.946. For additional clarity, we also propose to incorporate a reference to this requirement in 47 CFR Sections 2.953 and 2.956.

comments on or before (105 days from publication in the Federal Register). To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

22. The proposed action is authorized under Sections 4(i), 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), and 303(r).

23. For further information regarding this Notice of Proposed Rule Making, contact John Reed, Office of Engineering and Technology, (202) 653-6288.

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

Reason for Action: This Notice of Proposed Rule Making responds to the petition submitted by the Electronic Industries Association, Consumer Electronics Group, to harmonize our rules regarding the announcement, advertising, display, activation and marketing of radio frequency (RF) devices prior to compliance with the applicable standards. On our own initiative, we are also proposing amendments to the Part 2 rules to address the responsibility of parties that modify products prior to sale, and to establish a time frame within which samples or records files of verified devices must be submitted to the Commission upon request. In addition, we are proposing to amend the equipment authorization rules to clarify existing regulations, remove outdated regulations, and correct erroneous rule citations.

Objectives: The objectives of this proposal are to facilitate the marketing and display of RF devices, to identify the party ultimately responsible for ensuring that a marketed device complies with the standards, to facilitate the retrieval of test records by the Commission, to clarify existing regulations, to remove outdated regulations, and to correct existing errors in the rules.

Legal Basis: The proposed action is authorized under Sections 4(i), 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), and 303(r).

Reporting, Record Keeping and Other Compliance Requirements: One change to the reporting and record keeping requirements would be initiated by this proposal: parties that take authorized RF devices and remanufacture or otherwise modify those products prior to marketing would be designated as the parties responsible for ensuring that the products comply with the applicable rules and, thus, would have the same reporting and record keeping requirements that normally apply to an equipment manufacturer.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules:
None

Description, Potential Impact and Number of Small Entities Involved:
It is unknown how many small entities that may be affected. There should be no adverse impact on any party that manufactures or markets equipment that currently complies with our standards.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with Stated Objectives: None

APPENDIX B

Title 47 of the Code of Federal Regulations, Part 2, is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

AUTHORITY: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.803 is deleted.

3. A new Section 2.803 is added to read as follows:

Section 2.803 Marketing of Radio Frequency Devices Prior to Equipment Authorization.

(a) No person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless:

(1) In the case of a device subject to type acceptance, certification, or notification, such device has been authorized by the Commission in accordance with the rules in this Chapter and is properly identified and labelled as required by Section 2.925 and other relevant sections in this Chapter; or

(2) In the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment, where required), technical, labelling and identification requirements specified in this Chapter.

(b) The provisions of paragraph (a) do not forbid conditional sales contracts between manufacturers and wholesalers or retailers where delivery is contingent upon compliance with the applicable equipment authorization and technical requirements, nor do they prohibit agreements between parties to produce new products, manufactured in accordance with designated specifications.

(c) Notwithstanding the provisions of paragraph (a), a radio frequency device may be advertised or displayed, e.g., at a trade show or exhibition, prior to equipment authorization or, for devices not subject to the equipment authorization requirements, prior to a determination of compliance with the applicable technical requirements provided the advertising contains, and the display is accompanied by, a conspicuous notice worded as follows:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

Except as provided elsewhere in this Chapter, devices displayed under the provisions of this paragraph may not be activated or operated.

(d) Notwithstanding the provisions of paragraph (a), the announcement and offer for sale solely to business, commercial, industrial, scientific or medical users (but not to the general public) of a radio frequency device that is in the conceptual, developmental, design or preproduction stage is permitted prior to equipment authorization or, for devices not subject to the equipment authorization requirements, prior to a determination of compliance with the applicable technical requirements provided the prospective buyer is advised in writing at the time of announcement or offer for sale that the equipment is subject to the FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or to centers of distribution.

(e) Notwithstanding the provisions of paragraph (a), any radio frequency device may be operated, but not marketed, prior to equipment authorization or determination of compliance with the applicable technical requirements for the following purposes:

- (1) Compliance testing;
- (2) Demonstration at a trade show provided the notice contained in paragraph (c) of this section is displayed in a conspicuous location on, or immediately adjacent to, the device;
- (3) Evaluation of product performance and determination of customer acceptability, provided such operation takes place at the manufacturer's facilities during developmental, design or preproduction states; or,
- (4) Evaluation of product performance and determination of customer acceptability where customer acceptability of a radio frequency device cannot be determined at the manufacturer's facilities because of size or unique capability of the device, provided the device is operated at a business, commercial, industrial, scientific, or medical user's site, but not at a residential site, during the development, design or preproduction stages. A product operated under this provision shall be labelled, in a conspicuous location, with the notice in paragraph (c) of this section.
- (5) For the purpose of paragraphs (e)(3) and (e)(4) of this section, the term "manufacturer's facilities" includes the facilities of the party responsible for compliance with the regulations and the manufacturer's premises, as well as other entities working under the authorization of the responsible party in connection with the development and manufacture, but not marketing, of the equipment.
- (6) The provisions of paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section do not eliminate any requirements for station licenses that may be specified elsewhere in this Chapter.
- (f) For radio frequency devices subject to verification and sold solely to business, commercial, industrial, scientific, and medical users (excluding sales to the general public), parties responsible for verification of the devices shall have the option of ensuring

compliance with the applicable technical specifications of this Chapter at each end user's location after installation, provided that the purchase or lease agreement includes a proviso that such a determination of compliance be made and is the responsibility of the party responsible for verification of the equipment.

(g) The provisions in paragraphs (b) - (f) of this section apply only to devices that are designed with the intent of compliance with all applicable requirements in this Chapter. The provisions in paragraphs (b) - (f) do not apply to radio frequency devices that could not be authorized or legally operated under the current rules. Such devices shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed.

4. Section 2.805 is deleted.

5. Section 2.806 is deleted.

6. Section 2.807 is amended by deleting the reference to Section 2.805 in the introductory paragraph.

7. Section 2.809 is deleted.

8. Section 2.811 is amended by deleting the reference to Section 2.805.

9. Section 2.813 is amended by deleting the reference to Section 2.805.

10. Section 2.815 is amended by changing the references in paragraphs (d) and (e) from Sections 97.75 and 97.76 to Sections 97.315 and 97.317.

11. Section 2.901 is amended by deleting the references in paragraphs (a) and (b) to type approval.

12. Section 2.903 is deleted.

13. Section 2.909 is amended by adding language to the end of paragraphs (a) and (b) and by adding a new paragraph (c) to read as follows:

Section 2.909 Responsible party.

(a) ... If radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to Section 2.929(b) of this Chapter, the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this Chapter.

(b) ... If radio frequency equipment is modified subsequent to original manufacture or importation, the party performing the modification is designated as the responsible party.

(c) If, because of modifications performed subsequent to authorization, a new party becomes responsible for ensuring that a

product complies with the technical standards, the equipment shall be labelled, following the specifications in Section 2.925(d) of this Chapter, with the following: "This product has been modified by [insert name, address and telephone number of the party performing the modifications]."

14. Section 2.913 is amended by revising the language in paragraphs (a) and (b) to read as follows:

Section 2.913 Submittal of equipment authorization application or information to the Commission.

(a) Applications and fees for equipment authorization shall be submitted to the address shown in Section 1.1103 of this Chapter unless otherwise directed.

(b) Any information or equipment samples requested by the Commission pursuant to the provisions of Subpart J of this Part shall, unless otherwise directed, be submitted to the FCC, Authorization and Evaluation Division, 7435 Oakland Mills Road, Columbia, MD 21046.

15. Section 2.915 is amended by deleting the reference to type approval in paragraphs (a) and (c).

16. Section 2.917 is amended by deleting paragraph (d).

17. Section 2.924 is amended to read as follows:

Section 2.924 Marketing of electrically identical equipment having multiple trade names and models or type numbers under the same FCC Identifier.

The grantee of an equipment authorization may market devices having different model/type numbers or trade names without additional authorization from the Commission provided such devices are electrically identical and the equipment bears an FCC Identifier validated by a grant of equipment authorization. A device will be considered to be electrically identical if no changes are made to the device authorized by the Commission, or the changes made to the device would be treated as Class I permissive changes within the scope of Sections 2.1001(b)(1) and 2.1043(b)(1) of this Chapter. Changes to the model number or trade name by anyone other than the grantee, or under the authorization of the grantee, shall be performed following the procedures in Section 2.933 of this Chapter.

18. Section 2.925 is amended by deleting paragraph (g) and subparagraphs (g)(1)-(g)(3), by changing the reference in subparagraph (b)(4) from Section 15.69(c) to Section 15.101, and by revising paragraph (d) to read as follows:

Section 2.925 Identification of equipment.

* * * * *

(b) * * *

* * * * *

(4) For a transceiver, the receiver portion of which is subject to verification pursuant to Section 15.101 of this chapter, the FCC Identifier required for the transmitter portion shall be preceded by the term "FCC ID:".

(c) [Reserved]

(d) In order to validate the grant of equipment authorization, the nameplate or label shall be permanently affixed to the equipment and shall be readily visible to the purchaser at the time of purchase.

* * * * *

19. Section 2.926 is amended by changing the reference in paragraph (e) from Section 15.69 to Section 15.101.

20. Section 2.927 is amended by deleting paragraph (d) and by revising paragraphs (a) and (b) to read as follows:

Section 2.927 Limitations on grants.

(a) A grant of equipment authorization is valid only when the FCC Identifier is permanently affixed on the device and remains effective until revoked or withdrawn, rescinded, surrendered, or a termination date is otherwise established by the Commission.

(b) A grant of an equipment authorization signifies that the Commission has determined that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. The issuance of a grant of equipment authorization shall not be construed as a finding by the Commission with respect to matters not encompassed by the Commission's rules, especially with respect to compliance with 18 U.S.C. 2512.

(c) * * *

21. Section 2.931 is amended by deleting the reference to type approval.

22. Section 2.932 is amended by adding a new paragraph (f), to read as follows:

Section 2.932 Modification of equipment.

* * * * *

(f) All requests for permissive changes submitted to the Commission must be accompanied by the anti-drug abuse certification required under Section 1.2002 of this Chapter.

23. Section 2.933 is amended by revising paragraphs (a) and (c) and subparagraph (b)(7) to read as follows:

Section 2.933 Change in identification of equipment.

(a) A new application for equipment authorization shall be filed

whenever there is a change in the identification of the equipment with or without a change in design, circuitry or construction. However, a change in the model/type number or trade name performed in accordance with the provisions in Section 2.924 of this Chapter is not be considered to be a change in identification and does not require additional authorization from the Commission.

(b) * * *

* * * * *

(7) In the case of certified equipment, the photographs required by Section 2.1033(b) (7) showing the exterior appearance of the equipment, including the operating controls available to the user and the identification label. Photographs of the construction, the component placement on the chassis, and the chassis assembly are not required to be submitted unless specifically requested by the Commission.

(c) If the change in identification also involves a change in design or circuitry which falls outside the purview of a permissive change described in Sections 2.977, 2.1001 or 2.1043, a complete application shall be filed pursuant to Section 2.911.

24. Section 2.934 is amended by changing the reference from Section 2.910(b) to Section 2.913(b).

25. Section 2.936 is amended to read as follows:

Section 2.936 FCC inspection.

Upon reasonable request, each responsible party shall submit the following to the Commission or shall make the following available for inspection:

(a) The records required by Sections 2.938 and 2.955.

(b) A sample unit of the equipment covered under an authorization.

(c) The manufacturing plant and facilities.

26. Section 2.938 is amended to read as follows:

Section 2.938 Retention of records.

(a) For each equipment subject to the Commission's standards, the responsible party shall maintain the records listed below:

(1) A record of the original design drawings and specifications and all changes that have been made that may affect compliance with the standards and the requirements of Section 2.931.

(2) A record of the procedures used for production inspection and testing to ensure conformance with the standards and the requirements of Section 2.931.

(3) A record of the test results that demonstrate compliance with the appropriate regulations.

(b) The provisions of paragraph (a) of this section shall also apply to a manufacturer of equipment produced under the provisions of Section 2.929(b) of this Chapter. The retention of the records by the manufacturer under these circumstances shall satisfy the grantee's responsibility under paragraph (a) of this section.

(c) The records listed in paragraph (a) of this section shall be retained for one year after the manufacture of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party (or under paragraph (b) of this section the manufacturer) is officially notified that an investigation or any other administrative proceeding involving its equipment has been instituted.

27. Section 2.941 is amended by replacing the reference in paragraph (b) to Section 0.457 with Sections 0.441-0.470.

28. Section 2.946 is amended by revising the introductory sentence in paragraph (a) to read as follows:

Section 2.946 Penalty for failure to provide test samples and data.

(a) Any responsible party, as defined in Section 2.909 of this Chapter, and any party who markets equipment subject to the provisions on this Chapter shall provide a test sample(s) or data upon request by the Commission. * * *

* * * * *

29. Section 2.953 is amended by revising the title and paragraphs (a), (b) and (d) to read as follows:

Section 2.953 Responsibility for compliance.

(a) In verifying compliance, the responsible party, as defined in Section 2.909 of this Chapter, warrants that each unit of equipment marketed under the verification procedure will be identical to the unit tested and found acceptable with the standards and that the records maintained by the responsible party continue to reflect the equipment being produced under such verification within the variation that can be expected due to quantity production and testing on a statistical basis.

(b) The importer of equipment subject to verification may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards rely on the manufacturer or independent testing agency to verify compliance. The test records required by Section 2.955 however should be in the English language and made available to the Commission upon a reasonable request, in accordance with Section 2.956 of this Chapter.

(c) * * *

(d) Verified equipment shall be reverified if any modification

or change adversely affects the emanation characteristics of the modified equipment. The party designated in Section 2.909 of this Chapter bears responsibility for continued compliance of subsequently produced equipment.

30. Section 2.955 is amended by revising paragraph (a) and subparagraph (a)(3) to read as follows:

Section 2.955 Retention of records.

(a) For each equipment subject to verification, the responsible party, as shown in Section 2.909 of this Chapter, shall maintain the records listed below:

* * * * *

(3) A record of the measurements made on an appropriate test site that demonstrates compliance with the applicable regulations. The record shall:

- (i) Indicate the actual date all testing was performed.
- (ii) State the name of the test laboratory, company, or individual performing the verification testing. The Commission may request additional information regarding the test site, the test equipment or the qualifications of the company or individual performing the verification tests.
- (iii) Contain a description of how the device was actually tested, identifying the measurement procedure and test equipment that was used.
- (iv) Contain a description of the equipment under test (EUT) and support equipment connected to, or installed within, the EUT.
- (v) Identify the EUT and support equipment by trade name and model number and, if appropriate, by FCC Identifier and serial number.
- (vi) Indicate the types and lengths of connecting cables used and how they were arranged or moved during testing.
- (vii) Contain at least two photographs showing the test set-up for the highest line conducted emission and showing the test set-up for the highest radiated emission. These photographs must be focused originals which show enough detail to confirm other information contained in the test report.
- (viii) List all modifications, if any, made to the EUT by the testing company or individual to achieve compliance with the regulations.
- (ix) Include all of the data required to show compliance with the appropriate regulations.
- (x) Contain, on the test report, the signature of the individual responsible for testing the product along with the name and signature of an official of the responsible party, as designated in

Section 2.909 of this Chapter.

* * * * *

31. Section 2.956 is revised to read as follows:

Section 2.956 FCC inspection and submission of equipment for testing.

(a) Each responsible party shall upon receipt of reasonable request:

(1) Submit to the Commission the records required by Section 2.955.

(2) Subject one or more sample units for measurements at the Commission's Laboratory.

(i) Shipping costs to the Commission's Laboratory and return shall be borne by the responsible party.

(ii) In the event the responsible party believes that shipment of the sample to the Commission's Laboratory is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, the responsible party may submit a written explanation why such shipment is impractical and should not be required.

(b) Requests for the submission of the records in Section 2.955 of this Chapter or for the submission of sample units are covered under the provisions of Section 2.946 of this Chapter.

32. Section 2.957 is deleted.

33. Section 2.961 is deleted.

34. Section 2.963 is deleted.

35. Section 2.965 is deleted.

36. Section 2.967 is deleted.

37. Section 2.969 is deleted.

38. Section 2.975 is amended by changing the reference in paragraph (b) from Section 2.909(c) to Section 2.911(c) and by revising paragraph (g) to read as follows:

Section 2.975 Application for notification.

* * * * *

(g) The records of measurement data, measurement procedures, photographs, circuit diagrams, etc. for a device subject to notification shall be retained for two years after the manufacture of said equipment has been permanently discontinued, or, if the responsible party is officially notified that an investigation or any other administrative proceeding involving the equipment has been

instituted prior to the expiration of such two year period, until the conclusion of that investigation or proceeding.

* * * * *

39. Section 2.979 is deleted.

40. Section 2.983 is amended by changing the reference in paragraph (i) from Subpart C of Part 97 to Subpart D of Part 97.

41. Section 2.1003 is deleted.

42. Section 2.1005 is amended by deleting the reference in paragraph (a) and subparagraph (c)(4) to Section 2.1003, by changing the reference in paragraph (c) from Section 97.3(z) to Section 97.3(a)(17), by changing the reference in paragraph (d) from CB Rule 21 to Section 95.411, and by changing the reference in paragraph (d) from Section 97.77 to Section 97.317.

43. Section 2.1033 is amended by changing the reference in subparagraph (b)(11) from Section 15.257(e) to Section 15.247(e).

44. Section 2.1045 is deleted.

45. Section 2.1300 is amended by changing the reference from Section 2.909 to Section 2.911.